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A Common Lawyer's View of His Civilian Colleagues

E. Allan Farnsworth

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I. INTRODUCTION

In recent years, the difficulty of conversations between cultures has become a fashionable subject of discourse. If you have seen, perhaps even read, a popular book entitled "Men Are From Mars, Women Are From Venus," you may recall that it bears the alternate title, "A Practical Guide for Improving Communication and Getting What You Want in Your Relationships."[1] The relationships meant are, of course, those with the other culture—the opposite sex. But you may also want to bridge other cultural gaps than those engendered by gender, for instance the gap between common lawyers and their civilian colleagues. It is this gap that I will address.

To begin with, I must confess that, unlike many of my distinguished predecessors in the Tucker Lecture series—such as René David, Paul André Crépeau, and André Tunc (to mention just a few from the French tradition)—I am neither a civilian nor a card-carrying comparatist. I have never taught a comparative law course, never belonged to an organization of comparatists, and never reveled at one of the congresses held by comparatists in exotic parts of the world. So I come to my topic as a simple common lawyer. I have, however, some familiarity with the problems of communication between our two legal cultures as a result of having negotiated and drafted with civilians in two important endeavors.

The first came during the decade of the 1970s, when I represented the United States at the United Nations Commission on International Trade Law (UNCITRAL) in the negotiation and drafting that culminated in the diplomatic conference in Vienna that produced the United Nations (Vienna) Convention on Contracts for the International Sale of Goods. The Convention is a multilateral treaty to which the United States and over forty other countries are now parties. It governs contracts for the international sale of goods much as Article 2 of the Uniform Commercial Code governs domestic sales.

The second opportunity came during the 1980s and early 1990s when, for roughly a decade, I was a member of the group at the International (Rome) Institute for the Unification of Private Law (UNIDROIT) that recently produced the UNIDROIT Principles of International Commercial Contracts. The

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1. John Gray, Men Are From Mars, Women Are From Venus (1992).

Principles, in contrast to the Convention, are not a treaty but merely a set of rules that the parties to a contract are free to incorporate by agreement. They are designed to be suitable for contracts for services as well as for sales.

It would be a mistake to suppose that the only cultural differences that needed to be resolved in UNCITRAL and UNIDROIT were those between common lawyers and civilians. There were differences between the industrialized countries and the developing countries, and there were differences, at the times in question, between the free market countries and the socialist countries. I will not go into these, however, confining my remarks to the differences between those of us who are common lawyers and our civilian colleagues.

I can assure those of you who are students that the course in comparative law I had in law school gave me at least a passing familiarity with the civil law that was indispensable in coping with those differences.[2] Those of you who study law here in Louisiana have a unique opportunity to acquire more than a passing familiarity with the civil law, and you never know when it will come in handy. When the distinguished jurist James Kent went on the bench in New York in the early nineteenth century, he described how his familiarity with the civil law came in handy:

> I made much use of the *Corpus Juris*, and as the judges (Livingston excepted) knew nothing of French or civil law, I had immense advantage over them.[3]

I will speak mainly of the differences and peculiarities that I have found—on both sides—when common lawyers meet with civilian colleagues. But just as there are differences among civilians, so too there are differences among common lawyers. So, I begin with a few observations about the peculiarities of *American* common lawyers that distinguish them from the English, the Australians, the Ghanaians, and others of our breed.

II. AMERICAN PECULIARITIES

In one way we Americans are closer than our common law brethren to our civilian colleagues, for we Americans come with our own codifications, something quite unknown in other common law systems. Just as civilians look first to the provisions of their codes and only then to the cases that have applied those provisions, we Americans do the same with our Uniform Commercial Code. In this we are unique in the common law world. Jurists the world over are familiar with our Uniform Commercial Code. And while my civilian

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2. *See* E. Allan Farnsworth, Looking in from Outside your Garden: Another View of Comparative Law, in The Responsiveness of Legal Systems to Foreign Influences 413, 422 (Swiss Institute of Comparative law 1992).

3. Peter Stein, *The Attraction of the Civil Law in Post-Revolutionary America*, 52 Va. L. Rev. 403, 408 (1966).

colleagues at the UNCITRAL and UNIDROIT meetings had little interest in decisions of common law courts, whether from America or England or elsewhere, their attitude toward our Code was quite different. Indeed, the Uniform Commercial Code has been one of our best exports.[4] When UNCITRAL met in New York, my civilian colleagues occasionally commissioned me to buy them copies of the Code at my law school's bookstore. The delegate from the Soviet Union had translated the Code into Russian. It is not surprising that one can find traces of the Code scattered throughout the Vienna Convention and the UNIDROIT Principles.

As you probably know, the Uniform Commercial Code has a particular civil law influence because of its principal moving force, Karl Llewellyn (of whom Chancellor Hawkland spoke in his Tucker Lecture last year). As a teenager, Llewellyn had been sent to a *Gymnasium* in Mecklenburg, Germany, in the thought that he might find more profit there than in high school at home in Brooklyn. When the first World War broke out, Llewellyn's affection for Germany took him from a Paris café to the front with the German army. He was wounded, hospitalized, and awarded the Iron Cross. After the war, he twice taught at Leipzig as a visiting professor and maintained a lifelong interest in civil law in general and in German law in particular.[5] It is, therefore, no coincidence that a centerpiece of the Code is the concept of good faith—much as the analogous concept of *Treu und Glauben* is a centerpiece of the German Civil Code. Were it not for this kinship of the Code with its European cousins, it might, I assume, have been more difficult in 1993 for Louisiana to have achieved a compromise between Louisiana law and the Code in your new civil code provisions on sale of goods.

In addition to our Code, we Americans have our Restatement. And though you have been taught that the authority of a Restatement is not that of legislation, the fact that the form of the Restatement resembles that of a code is not lost on our civil law colleagues.

I turn now from differences among common lawyers to the main subject at hand—differences between common lawyers and their civilian colleagues. I will treat differences of approach, style, terminology, and substance. First then, a difference of approach.

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4. This is so though it has been said by a distinguished comparatist that "[a]ny comparative appraisal of the Uniform Commercial Code is rendered difficult by its lack of basic similarity with the typical European or Latin-American commercial codes." Rudolf B. Schlesinger, *The Uniform Commercial Code in the Light of Comparative Law*, *in* 1 Study of the Uniform Commercial Code 57, 74 (N.Y. Law Revision Comm'n Leg. Doc. No. 65(A) (1955)).

5. He also spent brief periods before the war at the universities of Lausanne and Paris. *See* William Twining, Karl Llewellyn and the Realist Movement, ch. 6 and Appendix A (1985). *See also* James Whitman, *Commercial Law and the American Volk: A Note on Llewellyn's German Sources for the Uniform Commercial Code*, 97 Yale L.J. 156 (1987).

III. A DIFFERENCE OF APPROACH

Common lawyers and their civilian colleagues have traditionally taken very different views as to the role of legislation. Here is the view of Portalis, reflected in the French civil code: "The function of the law [*loi*] is to fix, in broad outline, the general maxims of justice [*droit*], to establish principles rich in suggestiveness [*conséquences*], and not to descend into the details."[6] A corollary of this view that a code should contain general principles is that a code contains all of the required general principles—it is a seamless body of law with no gaps. To simplify everything is an undertaking the value of which we would all have to admit. To anticipate everything is a goal impossible of achievement. Grant Gilmore, architect of Article 9 of our Uniform Commercial Code, described a civilian code as

> a legislative enactment which entirely pre-empts the field and which is assumed to carry within it the answers to all possible questions: thus when a court comes to a gap or an unforeseen situation, its duty is to find, by extrapolation and analogy, a solution consistent with the policy of the codifying law. . . .[7]

It is in this vein that Article 4 of your Louisiana Civil Code provides, "[w]hen no rule for a particular situation can be derived from legislation or custom, the court is bound to proceed according to equity. To decide equitably, resort is made to justice, reason, and prevailing usages."[8] By way of contrast, a common lawyer's code is still, to some extent, viewed as a collection of diverse statutes enacted against the backdrop of the common law. This view is reflected in a tradition of narrow construction of statutes by common law courts that would startle our civilian colleagues. Certainly no civilian would have authored the remark of a learned English observer in 1882 that some of the rules of statutory interpretation in his country's courts "cannot well be accounted for except on the theory that Parliament generally changes the law for the worse, and that the business of the judge is to keep the mischief of its interference within the narrowest possible bounds."[9] I should interject here, since many of my quotations are from across the Atlantic, that English drafting—though assumed by many civilians to be identical to ours—differs from American drafting, and I much prefer the latter. But, both differ markedly from the civilian view. Section 1-103 of the Commercial Code makes it clear that this code is not, as Gilmore put it, "a legislative enactment which entirely pre-empts the field and

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6. Jean Étienne Marie Portalis et al., Discours préliminaire (1827), as quoted in Arthur T. von Mehren & James R. Gordley, The Civil Law System 54 (1977).

7. Grant Gilmore, *Legal Realism: Its Cause and Cure*, 70 Yale L.J. 1037, 1043 (1961).

8. La. Civ. Code art. 4.

9. Frederick Pollock, Essays in Jurisprudence and Ethics 85 (1882).

which is assumed to carry within it the answers to all possible questions. . . ."[10] That section provides: "Unless displaced by the particular provisions of this Act, the principles of law and equity . . . shall supplement its provisions."[11] Observe that the reference is not, as in the Louisiana code, to "justice" and "reason," but to "law and equity," which means to a common lawyer the body of case law—from law courts and equity courts—that antedated the Code. The Code states what I call the "Swiss cheese theory" of code interpretation: Regard the Code as a piece of Swiss cheese with all its holes, and if, when you search for a solution to your case, you find a hole in the Code, look through it to the backdrop of case law. Here is a major difference in approach between ourselves and the civilians.

How did we common lawyers and the civilians work out this difference in the Vienna Convention? The more numerous civilians had some success. What they got, in article 7(2), was this: "Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based."[12] Portalis would have approved this invitation to reason by analogy. But we common lawyers also had some success. What we got, in the balance of article 7(2) was this: "In the absence of such principles, [matters not expressly settled by the Convention are to be settled] in conformity with the law applicable by virtue of the rules of private international law."[13] Here is a recognition of the Swiss cheese theory: Look at the Convention as a piece of Swiss cheese, and, if you see a hole in the Convention, look through it to the backdrop of the law that would otherwise apply under choice of law rules. This concession to the common lawyers was all the more remarkable because the predecessor of the Vienna Convention—the less widely adopted Uniform Law on the International Sale of Goods—had said exactly the opposite. It had explicitly rejected the Swiss cheese theory by excluding rules of private international law "for the purposes of the application of the present Law."[14]

From a difference of approach, I turn to a difference of style.

IV. A DIFFERENCE OF STYLE

Anyone who compares the writing styles of jurists, whether in drafting legislation, opinions, contracts, or whatnot, cannot fail to notice that common lawyers are more prolix than their civilian counterparts and that American jurists are the most prolix of all. The poet John Donne—who knew English lawyers from his education at Lincoln's Inn—thus caricatured those lawyers nearly four centuries ago:

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10. Gilmore, *supra* note 7, at 1043.
11. U.C.C. § 1-103.
12. United Nations (Vienna) Convention on Contracts for the Int'l Sale of Goods, art. 7(2).
13. *Id.*
14. Uniform Law on the International Sale of Goods art. 2.

> In parchments then, large as his fields, he draws
> Assurances, bigge as gloss'd civill laws,
> So huge that men (in our times forwardnesse)
> Are Fathers of the Church for writing lesse.[15]

The propensity of common lawyers to write on and on has elicited a variety of plausible explanations,[16] and I have one of my own to add—one that may appeal to the student reader. It is that the lecture method practiced for centuries by our civilian colleagues in their great law schools, such as Bologna and Paris, reassures the student: all will be well if you will only trust the application of our great general principles. This is not just the case for civilian lawyers. According to the French mathematician Jules Henri Poincaré, "on the Continent [mechanics] is taught always more or less as a deductive and *à priori* science."[17] But instruction in the common law, particularly by the Socratic method practiced in this country, proceeds on a very different assumption. To again quote Poincaré: "The English teach mechanics as an experimental science."[18] In common law, faculties experiment with our cases, real and hypothetical, and discuss everything that can possibly go wrong with a transaction. Far from reassuring our students, we produce in them a profound, if healthy neurosis, which can only be alleviated when later called upon to draft by resorting to detail in the hope of covering all variations of their model. No wonder that common lawyers draw, as John Donne put it, "Assurances . . . So huge that men . . . Are Fathers of the Church for writing lesse."[19]

Everything we common lawyers write tends to the longer than what our civilian colleagues write, but this is particularly true of statutes. Civilians are comfortable with legislation, reflecting the view of Portalis, that it should only "fix, in broad outline, the general maxims" and not "descend into the details."[20] Not so the common lawyer. For in spite of the current flood of legislation in all common law countries, common lawyers are still more comfortable with cases. Most would subscribe to the confession of Lord Coke centuries ago that, "[i]f it be common law, I should be ashamed if I could not give you a ready answer; but if it be statute law, I should be equally ashamed if I answered you immediately."[21] The common lawyer's mistrust of legislation was put to good use by W. S. Gilbert in *Iolanthe*:

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15. John Donne, A Selection of His Poetry 104 (Penguin ed. 1952).

16. For explanations of differences in contract drafting, see John Langbein, *Comparative Civil Procedure and the Style of Complex Contracts*, 35 Am. J. Comp. L. 381 (1987); Georges A. Van Hecke, A Civilian Looks at the Common-Law Lawyer, *in* International Contracts: Choice of Law and Language 5, 10 (Willis L.M. Reese ed. 1962).

17. H. Poincare, Science and Hypothesis 89 (1952).

18. *Id.*

19. *See* Donne, *supra* note 15.

20. Portalis et al., *supra* note 6.

21. As quoted in Humphry W. Woolrych, The Life of the Right Honourable Sir Edward Coke, Knt. 197 (1826).

And while the House of Peers withholds its legislative hand,
And noble statesmen do not itch
To interfere with matters which
They do not understand,
As bright will shine Great Britain's rays
As in King George's glorious days.[22]

Against this mistrust, common lawyers who draft legislation use the defense of prolixity. So it is that the Uniform Commercial Code takes about 220 words to state the seller's implied obligations as to quality of goods while the Vienna Convention takes only 160 (and would probably have taken less if common lawyers had not had their hand in it).

For a graphic demonstration of the difference, take the matter of definitions. Definitions are largely alien to the civilian tradition. You have only a few avowed definitions in your Louisiana Civil Code. (I say "avowed" definitions because it is not uncommon for civilian codes to conceal definitions as substantive rules—as your Louisiana Civil Code does for such terms as "confirmation" and "ratification," which appear in the guise of substantive rules.[23])

In contrast, to make sure that unfriendly common law judges will not misinterpret legislation, legislatures in common law countries provide judges with a profusion of definitions. Article 2 of our Code begins with a list of three dozen definitions peculiar to the sale of goods, in addition to the nearly fifty general definitions in Article 1, for a total of over eighty. You may recall Lord Mildew's dictum in *Bluff v. Father Gray*: "If Parliament does not mean what it says, it must say so."[24] By definitions, the common lawyer attempts to say so.

How did the common lawyers and the civilians work out this difference in the Vienna Convention? Here the civilians—more numerous than the common lawyers—prevailed. True to the civilian tradition, the Convention lacks avowed definitions—though there are a few concealed ones, since provisions such as that of article 25 on "fundamental breach" are plainly definitional.

From this difference of style, I turn to a difference of terminology.

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22. William S. Gilbert, Iolanthe or the Peer and the Peri (Lord Mountararat's Sont) Act 2.

23. The Louisiana Civil Code has a few definitions designated as definitions: *see, e.g.*, La. Civ. Code art. 1756 (entitled "Obligations; definition"); La. Civ. Code art. 1763 (entitled simply "Definition" and defining a "real obligation"); La. Civ. Code art. 1825 (also entitled simply "Definition" and defining "subrogation"). Other definitions are held out as substantive rules: *see, e.g.*, La. Civ. Code art. 1842 (entitled "Confirmation" but containing a definition of "confirmation"); La. Civ. Code art. 1843 (entitled "Ratification" but containing a definition of "ratification").

24. A.P. Herbert, The Uncommon Law 313 (7th ed. 1950), as quoted in Hupman v. Cook, 640 F.2d 497, 504 (4th Cir. 1981).

V. A DIFFERENCE OF TERMINOLOGY

Discussions at UNCITRAL went on in six official languages, those at UNIDROIT in two working languages. The problem of translation sometimes exposed differences in terminology. Thus, you will find that the English text of the UNIDROIT Principles uses the term "good faith and fair dealing," while the equally authentic French text says only "*bonne foi*"—on the ground that "fair dealing" is implicit in the French term for good faith. And those from the French tradition will be amused to find that the UNIDROIT Principles render *force majeure* the same way in English, while those from the English tradition will enjoy finding that the Principles render "hardship" the same way in French.

Aside from such questions of translation, the legal jargon of common lawyers differs from that of our civilian colleagues. Every common lawyer knows that in a sale of goods it is the *buyer* who is the "debtor" and the *seller* who is the "creditor," because it is the buyer who owes the price to the seller. And every civilian knows that in such a transaction it is the *seller* who is commonly called the "debtor" and the *buyer* the "creditor," because it is the seller who has the duty to render the characteristic performance, delivery of the goods. This difference was resolved in the UNIDROIT Principles when I joined the Working Group by deleting the words "debtor" and "creditor" from the original drafts, prepared by civilians, and replacing them with "obligor" and "obligee."

Then there is the matter of Latin maxims. Common lawyers now enter the profession with no more Latin than *expressio unius* and *ejusdem generis*—if that. Our civilian colleagues, however, at least those from Europe, cherish such singular maxims as *suum cuique tribuere* (to render to everyone his own). Nothing can be done about this in polite conversation. But in drafting both UNCITRAL and UNIDROIT have accepted the principle that Latin words are not to be used. While the older and "Eurocentric" Uniform Law on the International Sale of Goods spoke of "*ipso facto* avoidance," its successor, the Vienna Convention, has nothing but English words.

I now turn from approach and style to substance.

VI. SOME DIFFERENCES OF SUBSTANCE

What differences of substance divided the common lawyers and their civilian colleagues at UNCITRAL and UNIDROIT? Though there were many, I shall confine myself to three that arose at both UNCITRAL and UNIDROIT and that were particularly troublesome: the duty of good faith performance, the availability of specific performance, and the enforceability of penalty clauses.

First, we consider good faith. The concept of good faith plays a major role in civilian contract law. The most remarkable example is Article 242 of the German Civil Code, which requires parties to observe *Treu und Glauben*—a few words that have spawned a vast outpouring of caselaw. To the civilian mind, good faith is a broad reaching concept that covers far more territory than the

comparable provision of Uniform Commercial Code 1-203, which requires good faith in the performance of contracts.[25] English law, at the opposite extreme from the civilians, adamantly refuses to recognize any such duty of good faith whatsoever. The common lawyers at UNCITRAL, uneasy with the vague and expansive civilian concept of good faith performance, adamantly refused to accept a provision in the Vienna Convention requiring good faith performance; the civilians sternly insisted on the inclusion of such a provision. Which camp prevailed? Consider article 7(2): "In the interpretation of this Convention, regard is to be had to . . . the need to promote . . . good faith in international trade."[26] What should you make of this? The common lawyer will tell you that since it speaks only to the interpretation of the *Convention*, it was a harmless compromise that cannot possibly impose a duty of good faith on the contracting *parties*. But some civilians suggest that it is a Trojan horse that will enable a civilian judge or arbitrator to impose a duty of good faith on a contracting party. Not a very happy compromise between the two views. What do the UNIDROIT Principles say? No compromise there. Under article 1.7, each party "must act in accordance with good faith and fair dealing. . . ."[27] A clear victory for the civilians.

Second, we turn to specific performance. As most of you know, courts in civilian legal systems routinely grant specific performance by ordering parties to perform their contracts. But courts in common law systems, for reasons that are largely historical, regard specific performance as an "extraordinary" remedy, to be granted only when an award of damages would not be "adequate."[28] (I might add here that we Americans sometimes rationalize the denial of specific performance on the ground that this permits a party to a contract to commit an "efficient breach," but that concept of law and economics is one that not only does not travel well, but that struck most of my civilian colleagues as bordering on the immoral.) How, then, was this fundamental difference resolved in the Vienna Convention?

Look first at article 46, which provides that a "buyer may require performance by the seller of his obligations. . . ."[29] Here it seems that the civilians carried the day. But now look at article 28, which provides that if a party "is entitled to require performance of . . . the other party, a court is not bound to enter a judgement for specific performance unless the court would do so under its own law in respect of similar contracts of sale."[30] This was a victory for the common lawyers, but think of what it means. Suppose that an importer of some standard commodity such as spices has a choice between suing an exporter in

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25. La. Civ. Code art. 1759: "Good faith shall govern the conduct of the obligor and the obligee in whatever pertains to the obligation."

26. United Nations (Vienna) Convention on Contracts for the Int'l Sale of Goods, art. 7(2).

27. UNIDROIT, art. 1.7.

28. See 3 Farnsworth on Contracts § 12.4 (1990).

29. United Nations (Vienna) Convention on Contracts for the Int'l Sale of Goods, art. 46.

30. *Id.* at art. 28.

London or in Paris. If suit is in London, article 28 will qualify article 46, and the English court will not be required to grant specific performance. It would not do so under English law for a contract to sell spices, so it is not required to do so under the Convention. But if suit is in Paris, article 28 does not affect the French court. Since it would routinely grant specific performance under French law, the importer can get specific performance under article 46. The result under this awkward compromise therefore turns on which forum—London or Paris—the plaintiff chooses, a less than satisfactory result for a convention intended to make law uniform.

How do the UNIDROIT Principles resolve this difference? Article 7.2.2 begins by providing that "[w]here a party who owes an obligation other than one to pay money does not perform, the other party may require performance."[31] The Principles have no provision comparable to the awkward compromise of article 28 of the Vienna Convention. Instead, under an exception to the general rule of article 7.2.2, a party that "may reasonably obtain performance from another source"[32] cannot require performance, which brings the rule close to the traditional common law position.

Finally, we come to penalty clauses. Another profound difference between these two legal cultures relates to the validity of penalty clauses. Civilians generally find nothing objectionable in provisions imposing penalties for breach. Courts in common law countries, however—again for reasons that are largely historical—refuse to enforce provisions imposing penalties (unless, of course, they are cleverly disguised as "liquidated damages"). How did the Vienna Convention resolve this difference? It did not resolve it at all, because the subject was considered "too hot to handle." The Convention, therefore, has no provision on penalties. When the Convention was finished, UNCITRAL created another Working Group, which attempted to draft a special convention on this touchy subject. But it was indeed "too hot." While UNCITRAL did produce its Uniform Rules on Contract Clauses for an Agreed Sum Due Upon Failure of Performance, they were buried with a pious Resolution of the General Assembly in 1983 that admonishes courts to give "serious consideration" to the Rules and "where appropriate, implement them." No country has, and it is unlikely that any country ever will.

What about penalties under the UNIDROIT Principles? Surprisingly, article 7.4.13 says: "Where the contract provides that a party who does not perform is to pay a specified sum to the aggrieved party for . . . non-performance, the aggrieved party is entitled to that sum irrespective of its actual harm."[33] A court or arbitrator may, however, reduce the sum to a reasonable amount if it is "grossly excessive." What was too hot for UNCITRAL to handle was easily dispatched by the drafters of the Principles, and in accord with the civilian view.

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31. UNIDROIT, art. 7.2.2.
32. UNIDROIT, art. 7.2.2(c).
33. UNIDROIT, art. 7.4.13.

VII. A DIFFERENCE AND AN EXPLANATION

Here, then, are three examples dealing with good faith, specific performance, and penalties. In the case of good faith UNCITRAL achieved an ambiguous compromise. In the case of specific performance UNCITRAL settled for a clear but non-uniform compromise, and in the case of penalties UNCITRAL was unable to do anything effective. And yet as to all three, the UNIDROIT Principles have clear solutions—not compromises—the first and third generally in accord with the civilian view and the second close to the common law position. (I should note in passing that while I have had time to discuss only these three particularly troublesome examples, the solutions to the three that I have discussed reflect what I think was the dominance of the civilian view at UNIDROIT.) What can be the reasons for this difference and the apparantly greater success of the UNIDROIT Principles in resolving differences between common lawyers and civilians? Here are two.

First, the Vienna Convention is a multilateral treaty—along with a constitution, the highest form of legislation. The UNIDROIT Principles are not legislation at all, but merely terms that the parties can incorporate if they so choose. This is a particularly compelling explanation in the case of specific performance. Under the proposed revision of Article 2 of our Uniform Commercial Code, a court will be permitted to grant specific performance "if the parties have expressly agreed to that remedy."[34] And if the parties have incorporated the Principles, they have so agreed. But this is not the only explanation.

Second, the United Nations is a politicized organization, and, at the time in question, UNCITRAL had within it clusters of industrialized, socialist, and developing countries. In United Nations commissions such as UNCITRAL, delegates represent their governments, procedure is formal, and interventions are translated into the official languages, which had become six in number by the time of the diplomatic conference in Vienna. UNCITRAL, on the contrary, is less politicized—in its origins largely Eurocentric. In its Working Groups members do not serve as government representatives, procedure is often informal, and interventions are often not translated into the other of the two working languages.

For these reasons it proved to be easier for both groups, common lawyers and civilians, to make concessions at UNIDROIT than at UNCITRAL. Although—indeed, perhaps because—the results at UNIDROIT were less dramatic than those at UNCITRAL, the ability to work together and reach effective compromises were greater. If common lawyers are from, say, Saturn and civilians are from, say, Jupiter, A Practical Guide for Improving Communication between the two would do well to look to the model of UNIDROIT.

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34. U.C.C. § 2-707 (proposed revision July 1996).